

**§ 168A-5. Discrimination in employment; exemptions.**

- (a) Discriminatory practices. – It is a discriminatory practice for:
- (1) An employer to fail to hire or consider for employment or promotion, to discharge, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition with respect to compensation or the terms, conditions, or privileges of employment;
  - (2) An employment agency to fail or refuse to refer for employment, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition;
  - (3) A person controlling an apprenticeship, on-the-job, or other training or retraining program, to discriminate against a qualified person with a disability on the basis of a disabling condition in admission to, or employment in, a program established to provide apprenticeship or other training;
  - (4) An employer or employment agency to require an applicant to identify himself as a person with a disability prior to a conditional offer of employment; however, any employer may invite an applicant to identify himself as a person with a disability in order to act affirmatively on his behalf; or
  - (5) An employer, labor organization, or employment agency to fail to meet the duties imposed on them by G.S. 168A-4(b).
- (b) Exemptions. – It is not a discriminatory action for an employer, employment agency, or labor organization:
- (1) To make an employment decision on the basis of State and federal laws or regulations imposing physical, health, mental or psychological job requirements;
  - (2) To fail to hire, transfer or promote, or to discharge a person with a disability who has a history of drug abuse or who is unlawfully using drugs where the job in question is in an establishment that manufactures, distributes, dispenses, conducts research, stores, sells or otherwise handles controlled substances regulated by the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;
  - (3) To fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment;
  - (4) To fail to make reasonable accommodations where the person with a disability has not fulfilled the duties imposed by G.S. 168A-4;
  - (5) To inquire whether a person has the ability to perform the duties of the job in question;
  - (6) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided (i) that an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and (ii) that the examination, unless limited to determining the extent to which a person's disabling condition would interfere with his or her ability or capacity to safely and satisfactorily perform the duties of the

job in question or the possible accommodations for a disabling condition, is required of all persons conditionally offered employment for the same position regardless of disabling condition;

- (7) To obtain medical information or to require or request a medical examination where such information or examination is for the purpose of establishing an employee health record;
- (8) To administer pre-employment tests, provided that the tests (i) measure only job-related abilities, (ii) are required of all applicants for the same position unless such tests are limited to determining the extent to which the person's disabling condition would interfere with his or her ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question, and (iii) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question, provided that an employer shall not be liable for improper testing which was administered by a State agency acting as an employment agency. (1985, c. 571, s. 1; 1999-160, s. 1.)